

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

Soverain Software LLC,

Plaintiff,

v.

Civil Action No. 6:09-cv-00274-LED

J.C. Penney Corporation, Inc.,
Amway Corp.,
Avon Products, Inc.,
Bidz.com, Inc.,
HSN, Inc.,
HSN Improvements, LLC,
Cornerstone Brands, Inc.,
Ballard Designs, Inc.,
Garnet Hill, Inc.,
Smith & Noble, LLC,
The Territory Ahead, Inc.,
QVC, Inc.,
Shutterfly, Inc.,
Victoria's Secret Stores Brand Management,
Inc.,
Victoria's Secret Direct Brand Management,
LLC,
VistaPrint, Ltd., and
VistaPrint USA, Inc.

Defendants.

**THE PARTIES' JOINT SUBMISSION
REGARDING THE COURT'S DOCKET CONTROL ORDER**

On September 22, 2011, the Court asked the parties to confer and submit a revised Docket Control Order by October 6, 2011. Plaintiff Soverain Software, LLC ("Soverain") and Defendants Victoria's Secret Stores Brand Management, Inc., Victoria's Secret Stores Brand Management, LLC, J.C. Penney Corporation, Inc., and Avon Products, Inc. (collectively,

“Defendants”) conferred on October 3, 2011 and again on October 4, 2011. The parties respectfully submit the following proposed schedule with respect to pre-trial submissions:

1. To the extent the parties have revisions to their exhibit lists, they will be served on or before October 12, 2011;
2. The parties will serve updated damages calculations on or before October 14, 2011;
3. The parties will serve any revisions to their jury instructions or the pre-trial order on October 14, 2011;
4. To the extent the parties have revisions to reduce the number of deposition designations, they will be served on or before October 18, 2011;
5. Defendants propose a filing date for any substitute motions in limine by October 14, 2011. Responses to any substitute motions in limine will be filed by October 18, 2010. As there has been six months since the original motions in limine were filed, and further refinement of arguments by both sides, the issues covered by the original motions in limine may no longer be as pressing and issues not covered by the original motions may have become more. Under Defendants’ proposal, a substitute motion in limine would only be allowed if an original motion were first withdrawn. The total number of motions in limine subject to either negotiated agreement or to be heard by the court is to remain at ten per side.

Soverain objects to Defendants’ proposed filing of additional motions in limine. Prior to the first pre-trial conference, each side filed 10 motions, the limit set forth in the Court’s November 23, 2010 Order. Those motions were fully briefed, and to the extent they were not decided at the first pre-trial conference, they remain pending before the Court. Nothing in the Court’s Orders provides for either side to substitute new motions in limine, as Defendants now seek to do. Defendants’ proposal will unnecessarily burden the Court with additional motions on the eve of trial.

Defendants first raised this issue during a meet and confer on October 3, 2011. At that time, Soverain objected to Defendants’ proposed submission of additional motions in limine. The parties participated in a second meet and confer on October 4. Yet, Defendants have still not identified exactly how many motions they intend to file. Instead, they indicated that they would file at least one, but perhaps more. Moreover, even with respect to the one new motion Defendants have identified, there is no reason why they could not have filed it earlier. Nothing in the intervening six months has made the issue any “more pressing.” Indeed, as Soverain understands it, Defendants’ proposed motion relates to the original prosecution history of the ‘314 patent – something that has been available to Defendants since the beginning of this litigation.

Additionally, Defendants propose an unreasonably short amount of time of only two business days for Soverain to respond to Defendants' unspecified number of motions. For all these reasons, Soverain respectfully requests that the Court deny Defendants' untimely request to file additional motions in limine.

If the Court is inclined to accept briefing on additional motions, Defendants should file their new motions in limine, along with a motion for leave to file, by October 10, 2011. Soverain will file its oppositions to those motions by October 18, 2011.

The parties reserve the right to object to any supplemental or revised pre-trial submissions served pursuant to the above schedule. The parties will meet and confer regarding any disputes and will advise the Court if agreement cannot be reached.

The parties do not believe any other revisions to the Docket Control Order are necessary at this time.

Dated: October 6, 2011

Respectfully submitted,

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